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5 Attorneys for Defendant
GOOGLE INC.

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
11

12 RK WEST, INC., a California corporation
d/b/a Malibu Wholesale, individually and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 GOOGLE, INC. a Delaware Corporation; and
DOES 1 through 10, inclusive,

17 Defendants.
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Case No. 08-CV-03452 RMW RS

**DECLARATION OF LEO P.
NORTON IN SUPPORT OF
OPPOSITION TO
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED PURSUANT
TO CIVIL LOCAL RULE 3-12**

1 I, Leo P. Norton, declare:

2 1. I am an attorney licensed to practice law in the State of California, and I am
3 admitted to practice before this Court. I am an associate with the law firm of Cooley Godward
4 Kronish LLP, attorneys for Defendant Google Inc. in this action and in the three actions that RK
5 West seeks to relate through its administrative motion. As an attorney for Google, I have
6 personal knowledge of the facts set forth in this Declaration, and if called upon to testify, I could
7 and would testify competently thereto.

8 2. Attached hereto as Exhibit 1 is a true and correct copy of the Complaint against
9 Google in the case entitled *David Almeida v. Google, Inc.*, Case No. C 08-02088-RMW
10 ("*Almeida* case"), which was filed on April 22, 2008.

11 3. On August 25, 2008, I sent plaintiffs' counsel in the *Almeida, Levitte, RK West*,
12 and *Pulaski* cases a meet and confer letter via email and mail. I wrote to them to: (1) notify them
13 that the *Levitte, RK West*, and *Pulaski* cases are related to each other and to the earlier-filed
14 *Almeida* case; (2) attempt to reach a stipulation on Google's intended administrative motion under
15 Civil Local Rules 3-12 and 7-11 to relate the cases; and (3) request that Google's time to answer
16 or otherwise respond to the *Levitte, RK West*, and *Pulaski* cases complaints be coordinated and an
17 extension of time such that Google's new response deadline in those three cases is on or before
18 September 30, 2008. I requested that plaintiffs counsel respond to my letter by end of day
19 Wednesday, August 27, 2008. Attached as Exhibit 2 is a true and correct copy of the letter I sent
20 to plaintiffs' counsel on August 25, 2008.

21 4. On August 26, 2008, at 9:24 a.m., I received an email from plaintiff's counsel in
22 the *Levitte* case, which was copied to all other plaintiffs' counsel, purporting to write on behalf of
23 plaintiffs' counsel in the *Almeida, Levitte, RK West*, and *Pulaski* cases and requesting an
24 additional week to and including September 3, 2008 to respond to my August 25, 2008 letter and
25 granting an interim extension to respond to the complaint in the *Levitte* case. Later that day, at
26 12:19 p.m., I responded via email, which was copied to all plaintiffs' counsel in the four cases,
27 granting their requested extension. Still later that day, at 1:00 p.m., I received another email from
28 plaintiff's counsel in the *Levitte* case, which was copied to all other plaintiffs' counsel, stating

1 that plaintiffs' counsel in the four cases would be discussing the issues raised in my August 25,
2 2008 letter and that they would respond by Thursday, August 28, 2008 at the latest. Attached as
3 Exhibit 3 is a true and correct copy of an email chain containing my email to all plaintiffs'
4 counsel on August 25, 2008 enclosing my August 25, 2008 letter, the *Levitte* case plaintiff's
5 counsel's response on August 26, 2008, at 9:24 a.m., my response that day at 12:19 p.m., and the
6 *Levitte* case plaintiff's counsel's response at 1:00 p.m.

7 5. I did not receive a response from any of the plaintiffs' counsel on Thursday,
8 August 28, 2008 as promised. Having still not received any response after the holiday weekend, I
9 emailed all plaintiffs' counsel on September 2, 2008, at 8:11 a.m., demanding that plaintiffs
10 respond to my August 25, 2008 letter by noon. Attached as Exhibit 4 is a true and correct copy of
11 my September 2, 2008 email.

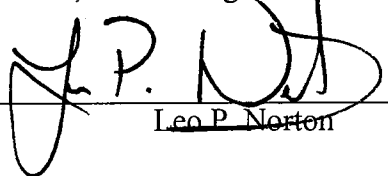
12 6. As of the signing and filing of this declaration, I have not received a response to
13 my August 25, 2008 letter or any of my email communications from the *RK West* case plaintiff's
14 counsel. The *RK West* plaintiff's counsel, who is also the *Almeida* case plaintiff's counsel, is the
15 only plaintiff's counsel that has not responded to my communications, and it is the only plaintiff's
16 counsel that has not responded to my request that Google's time to answer or otherwise respond
17 to the *Levitte*, *RK West*, and *Pulaski* cases complaints be coordinated and that Google be granted
18 an extension of time such that Google's new response deadline in those three cases is on or before
19 September 30, 2008. I have received responses from the *Levitte* and *Pulaski* cases plaintiffs, both
20 of whom take the position that the *Almeida* case is not related but have stipulated to Google's
21 request for a consolidated response deadline of September 30, 2008.

22 7. Late in the morning on September 2, 2008, I received via priority U.S. mail the *RK*
23 *West* case plaintiff's Administrative Motion to Consider Whether Cases Should be Related
24 Pursuant to Civil Local Rule 3-12 and supporting documents that were filed in the *RK West* case.
25 The administrative motion seeks to relate the *Levitte*, *RK West*, and *Pulaski* cases before Judge
26 James Ware.

27 8. Today, concurrently with the filing of its opposition to the *RK West* case plaintiff's
28 administrative motion, Google filed its administrative motion in the *Almeida* case, which seeks to

1 relate the *Almeida*, *Levitte*, *RK West*, and *Pulaski* cases. The *Almeida* case is the low-numbered
2 case.

3 I declare under penalty of perjury under the laws of the United States that the
4 foregoing is true and correct. Executed on September 4, 2008, at San Diego, California.

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Leo P. Norton

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2008, I electronically filed the foregoing **DECLARATION OF LEO P. NORTON IN SUPPORT OF OPPOSITION TO ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED PURSUANT TO CIVIL LOCAL RULE 3-12** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record at the following listed email addresses.

- **Brian S. Kabateck**
bsk@kbklawyers.com
- **Richard Kellner**
rlk@kbklawyers.com,rs@kbklawyers.com
- **Alfredo Torrijos**
at@kbklawyers.com,icd@kbklawyers.com

I also hereby certify that I caused the foregoing document to be personally delivered by consigning the document(s) to an authorized courier and/or process server for hand delivery on this 4th day of September, 2008 to the following listed addresses.

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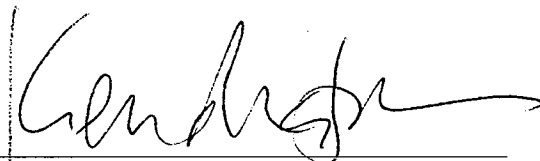
12 Hon. James Ware
13 United States District Court
14 Northern District of California
15 280 South 1st Street
16 Courtroom 8, 4th Floor
17 San Jose, CA 95113

16 **COURTESY COPY**
17 ***Hal K. Levitte, Case No. 08-cv-03369***

23 602239 /SD

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Northern District of California
450 Golden Gate Ave.
Courtroom 10, 19th Floor
San Francisco, CA 94102
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Pulaski & Middleman, LLC v. Google Inc.,
Case No. 08-cv-03888



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EXHIBIT 1

FILED

Filed
S1

2008 APR 22 A 11:47

(4)

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8 Attorneys for Plaintiff
David Almeida

ADR

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CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA, S.J.

E-FILING

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HRL

12 DAVID ALMEIDA, individually and on
13 behalf of all others similarly situated,

CASE NO. C08 02088

HRL

14 Plaintiff,

CLASS ACTION COMPLAINT

15 vs.

JURY TRIAL DEMANDED

16 GOOGLE, INC., a Delaware
17 Corporation; and DOES 1 through 10,
18 inclusive,

19 Defendants.

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22 Plaintiff David Almeida ("Plaintiff"), individually and on behalf of the class

23 described below, by his attorneys, makes the following allegations pursuant to the

24 investigation of his counsel and based upon information and belief except as to

25 allegations specifically pertaining to Plaintiff and his counsel, which are based on

26 personal knowledge. Plaintiff brings this action for damages and injunctive relief against

27 defendant, demanding a trial by jury.

28

CLASS ACTION COMPLAINT

By Fax

1 NATURE OF THE ACTION

2 1. Plaintiff brings this class action against Google, Inc. ("Google") to recover
3 damages and other relief available at law and in equity on behalf of himself as well as on
4 behalf of the members of the following class:

5 *All persons or entities located within the United States who*
6 *bid on a keyword through AdWords, left the "CPC content*
7 *bid" input blank, and were charged for content ads.*

8 2. This action arises from Google's deceptive, fraudulent and unfair practice
9 of tricking advertisers who seek on-line advertising through Google's AdWords program
10 into bidding for a service that they do not want.

11 3. Google is commonly thought simply as an Internet search engine; in fact
12 Google's business is online advertising. Google's business model is primarily dependent
13 on linking individuals who are searching the internet with advertisers who pay Google
14 (and others) for each time the linkage occurs. The Google Network is the largest online
15 advertising network in the United States.

16 4. AdWords is Google's primary advertising program and is the main source
17 of its revenue. Through AdWords, Google permits would-be advertisers to bid on words
18 or phrases that will trigger the advertisers' ads. AdWords is premised on a pay-per-click
19 ("PPC") model, meaning that advertisers pay only when their ads are clicked. As part of
20 the AdWords bidding process, therefore, advertisers must set a maximum cost per click
21 ("CPC") bid that the advertiser is willing to pay each time someone clicks on its ad.
22 When an advertiser is choosing its CPC bid, it is also given the "option" of entering a
23 separate bid for clicks originating from Google's "content network" which consists of
24 sites that are not search engines. These content network sites are those that use AdSense,
25 the other side of the Google advertising model.

26 5. This action arises from the fact that Google does not inform its advertisers
27 that if they leave the content bid CPC input blank, Google will use the advertiser's CPC
28 bid for clicks occurring on the content network. Google does this despite the fact that ads

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1 placed on the content network are demonstrably inferior to ads appearing on search result
 2 pages. Because there is no option to opt out of content ads during the AdWords
 3 registration process, advertisers reasonably believe that by leaving the content ad CPC
 4 input blank they can opt out of having their ads placed on the content network. Google,
 5 however, has charged and continues to charge those advertisers who leave content ad
 6 CPC input blank for content ads on third party websites.

7 PARTIES

8 6. Plaintiff David Almeida ("Plaintiff") is a resident of Essex County,
 9 Massachusetts and citizen of Massachusetts. Plaintiff has previously registered for an
 10 AdWords account as more particularly described herein and has also previously been
 11 charged for content ads as more particularly described herein.

12 7. Plaintiff is informed and believes and thereon alleges that defendant
 13 Google, Inc. ("Google") is a Delaware Corporation doing business in the state of
 14 California. Plaintiff is informed and believes and thereon alleges that there is no one
 15 state where Google conducts a substantial predominance of its business, making its
 16 principal place of business the state where it is headquartered. Network Solutions'
 17 headquarters – and, thus, its principal place of business – are located at 1600
 18 Amphitheatre Parkway, Mountain View, California. Accordingly, Defendant Google is a
 19 citizen of Delaware and California.

20 8. Plaintiff does not know the true names or capacities of the persons or
 21 entities sued herein as DOES 1 to 10, inclusive, and therefore sues such defendants by
 22 such fictitious names. Plaintiff is informed and believes and thereon alleges that each of
 23 the DOE defendants is in some manner legally responsible for the damages suffered by
 24 Plaintiff and the members of the class as alleged herein. Plaintiff will amend this
 25 complaint to set forth the true names and capacities of these defendants when they have
 26 been ascertained, along with appropriate charging allegations, as may be necessary.

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JURISDICTION AND VENUE

9. This Court has diversity subject matter jurisdiction over this class action pursuant to 28 U.S.C. § 1332(d) in that this is a civil action filed under Rule 23 of the Federal Rules of Civil Procedure and members of the class of Plaintiffs are citizens of a State different from defendant Google, and the aggregated amount in controversy exceeds \$5,000,000, exclusive of interest and costs. See 28 U.S.C. § 1332(d)(2), (6).

10. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(a) in that: (1) Google resides in this judicial district; (2) a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this judicial district; and (3) Google is subject to personal jurisdiction in the Northern District of California.

FACTUAL BACKGROUND

11. Google offers advertisers two types of ads. The first is a search ad. When an Internet user uses Google to search for a specific term or term, Google will display the ads of advertisers who have bid for those particular keywords. The second type of ad is contextual based ads, or content ads. These ads are shown on third party websites that have content that matches the keywords bid on by the advertiser. For example, an ad for a hardware store may be shown on a website that has content about home improvement projects.

12. In order to advertise with Google, advertisers must register with AdWords, Google's advertising program. The process of registering with AdWords involves an online process that begins by clicking on the "Advertising Programs" link on Google's homepage. After selecting to register with AdWords and the desired version, the advertiser moves to the initial step of the sign-up process. First, the advertiser selects the target language and geographic location. Then, the advertiser creates the ad that will be placed on Google's website or on third party websites and selects the desired keywords. The advertiser then selects the maximum daily budget and the maximum CPC bid. Here:

1 the advertiser has two choices, the "Default CPC bid" and the "CPC content bid". Next
2 to the "CPC content bid" input is the word "optional".

3 12. Nowhere on this page, or anywhere in the registration process, is there the
4 option to opt-out of content ads.

5 13. Advertisers who do not want to pay for ads placed on third party websites,
6 therefore leave the "CPC content bid" input blank, reasonably believing that the word
7 "optional" means that having content ads placed on third party websites is optional.

8 14. Google, however, fails to inform that an advertiser who leaves this
9 "optional" input blank will nonetheless be charged for third party content ads. By
10 redefining the universally understood meaning of an input form left blank, and then
11 intentionally concealing this redefinition, Google has fraudulently taken millions of
12 dollars from Plaintiff and the members of the class.

13 15. Plaintiff enrolled in AdWords in November 2006. Plaintiff created an
14 advertising campaign for his private investigation business. Plaintiff set the desired bids
15 for his ads, and, not wanting to pay for ads placed on third part content sites, left the CPC
16 content bid input blank. Plaintiff, like any reasonable consumer, expected that leaving an
17 input blank would indicate that he did not want to bid on content ads. This expectation
18 was supported by the fact that Plaintiff was not given the option of opting out of content
19 bids during the advertising campaign creation process.

20 16. Despite leaving the CPC content bid input blank, Google charged Plaintiff
21 for unwanted third party content ads.

22 CLASS ALLEGATIONS

23 13. Description of the Class: Plaintiff brings this nationwide class action on
24 behalf of himself and the Class defined as follows:
25

26 *All persons or entities located within the United States*
27 *who bid on a keyword though AdWords, left the "CPC*
28 *content bid" input blank, and were charged for content ads.*

1 14. Excluded from the Class are governmental entities, Defendant, any entity in
2 which Defendant has a controlling interest, and Defendant's officers, directors, affiliates,
3 legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns.
4 Also excluded from the Class is any judge, justice, or judicial officer presiding over this
5 matter and the members of their immediate families and judicial staff.

6 15. Plaintiff reserves the right to modify the class description and the class
7 period based on the results of discovery.

8 16. Numerosity: The proposed Class is so numerous that individual joinder of
9 all its members is impracticable. Due to the nature of the trade and commerce involved,
10 however, Plaintiff believes that the total number of class members is at least in the
11 hundreds of thousands and that the members of the Class are numerous and
12 geographically dispersed across the United States. While the exact number and identities
13 of class members are unknown at this time, such information can be ascertained through
14 appropriate investigation and discovery. The disposition of the claims of the Class
15 members in a single class action will provide substantial benefits to all parties and to the
16 court.

17 17. Common Questions of Law and Fact Predominate: There are many
18 questions of law and fact common to the representative Plaintiff and the proposed Class,
19 and those questions substantially predominate over any individualized questions that may
20 affect individual class members. Common questions of fact and law include, but are not
21 limited to, the following:

- 22 a. Whether Google charges for advertisements placed on third party
23 websites when the "optional" CPC content bid input is left blank,
24 and whether Google discloses this material fact to consumers;
25 b. Whether Google failed to disclose that when the "optional" CPC
26 content bid input is left blank, Google will still charge for ads placed
27 on third party websites;
28

- 1 c. Whether or not Plaintiff and the members of the Class have been
2 damaged by the wrongs complained of herein, and if so, the measure
3 of those damages and the nature and extent of other relief that should
4 be afforded;
- 5 d. Whether Google engaged in unfair, unlawful and/or fraudulent
6 business practices; and
- 7 e. Whether Google failed to disclose material facts about the subject
8 Google Adwords program.

9 18. Typicality: Plaintiff's claims are typical of the claims of the members of
10 the Class. Plaintiff and all members of the Class have been similarly affected by
11 Defendant's common course of conduct since they were charged for ads although they
12 also left the "optional" CPC content bid blank..

13 19. Adequacy of Representation: Plaintiff will fairly and adequately represent
14 and protect the interests of the Class. Plaintiff has retained counsel with substantial
15 experience in prosecuting complex and class action litigation. Plaintiff and his counsel
16 are committed to vigorously prosecuting this action on behalf of the Class, and have the
17 financial resources to do so. Neither Plaintiff nor his counsel has any interests adverse to
18 those of the proposed Class.

19 20. Superiority of a Class Action: Plaintiff and the members of the Class have
20 suffered, and will continue to suffer, harm as a result of Defendant's unlawful and
21 wrongful conduct. A class action is superior to other available methods for the fair and
22 efficient adjudication of the present controversy as individual joinder of all members of
23 the Class is impractical. Even if individual Class members had the resources to pursue
24 individual litigation, it would be unduly burdensome to the courts in which the individual
25 litigation would proceed. Individual litigation magnifies the delay and expense to all
26 parties in the court system of resolving the controversies engendered by Defendant's
27 common course of conduct. The class action device allows a single court to provide the
28 benefits of unitary adjudication, judicial economy, and the fair and equitable handling of

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1 all class members' claims in a single forum. The conduct of this action as a class action
 2 conserves the resources of the parties and of the judicial system, and protects the rights of
 3 the class member. Furthermore, for many, if not most, Class members, a class action is
 4 the only feasible mechanism that allows an opportunity for legal redress and justice.

5 21. Adjudication of individual Class members' claims with respect to the
 6 Defendant would, as a practical matter, be dispositive of the interests of other members
 7 not parties to the adjudication and could substantially impair or impede the ability of
 8 other Class members to protect their interests.

9 10 FIRST CAUSE OF ACTION

11 UNJUST ENRICHMENT

12 22. Plaintiff realleges the preceding paragraphs as if fully set forth herein and,
 13 to the extent necessary, pleads this cause of action in the alternative.

14 23. Through the actions described above, Google has received money
 15 belonging to Plaintiff and the Class through the fees collected from ads placed on third
 16 party content sites when a reasonable advertiser would have believed that leaving the
 17 CPC content bid input blank meant that they would not be charged for content ads.

18 24. Additionally, Google has reaped substantial profit by concealing the fact
 19 that when left blank, the "optional" CPC content bid would be set at an amount that could
 20 reach the amount bid for the search bid. Ultimately, this resulted in Google's wrongful
 21 receipt of profits and injury to Plaintiff and the Class. Google has benefited from the
 22 receipt of such money that it would not have received but for its concealment.

23 25. As a direct and proximate result of Google's misconduct as set forth above,
 24 Google has been unjustly enriched.

25 26. Under principles of equity and good conscience, Google should not be
 26 permitted to keep the full amount of money belonging to Plaintiff and the Class which
 27 Google has unjustly received as a result of its actions.

28 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

SECOND CAUSE OF ACTION
FRAUDULENT CONCEALMENT

27. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

28. Google knew at all material times that when an advertiser left the "optional" CPC content bid input blank, that advertiser would still be charged for content ad placed on third party websites. These facts were not known to Plaintiff and the Class.

29. Google had a duty to disclose the above known material facts because it knew that these material facts were unknown to Plaintiff and the Class, that Google was in a superior position of knowledge with regard to its own technology, and Google chose to make certain representations that presented only a part of the true story and misled consumers about the subject products.

30. Google's knowledge that advertisers would be charged for content ads placed on third party websites even when they left the "optional" CPC content bid input blank, combined with Google's knowledge that Plaintiff and the Class relied or relies upon Google to communicate the true state of facts relating to its AdWords program creates a legal obligation on Google's part to disclose to Plaintiff and the Class that leaving the "optional" CPC content bid input blank did not mean that they were not subject to charges for ads placed on third party websites.

31. Google intentionally concealed and/or suppressed the above facts with the intent to defraud Plaintiff and the Class.

32. Plaintiff and the Class were unaware of the above facts and would not have acted as they did if they had known of the concealed material facts.

33. Google's concealment of the above facts has caused damage to Plaintiff and the Class in an amount to be shown at trial.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE

SECTIONS 17200 ET SEQ.

34. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

35. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and have lost money or property as a result of Google's actions as delineated herein.

36. Class members have suffered injury in fact and have lost money or property as a result of Google's actions as delineated herein.

37. Google's actions as alleged in this complaint constitute an unfair or deceptive practice within the meaning of California Business and Professions Code sections 17200 *et seq.* in that Google's actions are unfair, unlawful and fraudulent, and because Google has made unfair, deceptive, untrue or misleading statements in advertising media, including the Internet, within the meaning of California Business and Professions Code sections 17500 *et seq.*

38. Google's business practices, as alleged herein, are unfair because they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers in that consumers are not informed that they will be charged for ads placed on third party websites even though the "optional" CPC content bid input was left blank.

39. Google's business practices, as alleged herein, are unlawful because the conduct constitutes fraudulent concealment, as well as the other causes of action herein alleged.

40. Google's practices, as alleged herein, are fraudulent because they are likely to deceive consumers.

41. Google's wrongful business acts alleged herein constituted, and constitute, a continuing course of conduct of unfair competition since Google is marketing and selling their products in a manner that is likely to deceive the public.

42. Google's business acts and practices, as alleged herein, have caused injury to Plaintiff, the Class and the public.

43. Pursuant to section 17203 of the California Business and Professions Code, Plaintiffs and the class seek an order of this court enjoining Google from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law, including those acts set forth in the complaint. Plaintiff and the Class also seek an order requiring Google to make full restitution of all moneys it wrongfully obtained from Plaintiff and the Class.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and members of the proposed Class request that the court enter an order or judgment against Defendant as follows:


1. Certification of the proposed Class and notice thereto to be paid by Defendant;
2. Adjudge and decree that Defendant has engaged in the conduct alleged herein;
3. For restitution and disgorgement on certain causes of action;
4. For an injunction ordering Defendant to cease and desist from engaging in the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;
5. For compensatory and general damages according to proof on certain causes of action;
6. For special damages according to proof on certain causes of action;
7. For both pre and post-judgment interest at the maximum allowable rate on any amounts awarded;
8. Costs of the proceedings herein;
9. Reasonable attorneys fees as allowed by statute; and

10. Any and all such other and further relief that this Court may deem just and proper.

Dated: April 22, 2008

KABATECK BROWN & KELLNER, LLP

By:


BRIAN S. KABATECK
RICHARD L. KELLNER
ALFREDO TORRIJOS
Attorneys for Plaintiff and proposed class

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury in the instant action.

Dated: April 22, 2008

KABATECK BROWN & KELLNER, LLP

By:


BRIAN S. KABATECK
RICHARD L. KELLNER
ALFREDO TORRIJOS

Attorneys for Plaintiff and proposed class

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EXHIBIT 2



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VIA EMAIL & MAIL

August 25, 2008

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San Francisco, CA 94111

RE: Google AdWords Putative Class Actions Pending in N.D. Cal.

David Almeida v. Google, Inc., Case No. C 08-02088-RMW (filed April 22, 2008)
Hal K. Levitte v. Google, Inc., Case No. C 08-03369-JW (filed July 11, 2008)
RK West, Inc. v. Google, Inc., Case No. C 08-03452-RMW (filed July 17, 2008)
Pulaski & Middleman, LLC v. Google Inc., Case No. C 08-03888-SI (filed August 14, 2008)

Dear Counsel:

We are counsel for Google Inc. in the *Levitte*, *RK West*, and *Pulaski & Middleman* cases.¹ We write to: (1) notify you that the *Levitte*, *RK West*, and *Pulaski & Middleman* cases are related to each other and to the earlier-filed *Almeida* case; (2) attempt to reach a stipulation on Google's intended administrative motion under Civil Local Rules 3-12 and 7-11 to relate the cases; and (3) request that Google's time to answer or otherwise respond to the *Levitte*, *RK West*, and

¹ Keker & Van Nest, LLP is counsel of record for Google in the *Almeida* case.



Plaintiffs' Counsel in Google AdWords Actions
August 25, 2008
Page Two

Pulaski & Middleman complaints be coordinated and an extension of time such that Google's new response deadline in those three cases is on or before September 30, 2008. For your reference, I am enclosing a copy of the four related complaints.

Related Google AdWords Putative Class Actions

Civil Local Rule 3-12 states that actions are related when "[t]he actions concern substantially the same parties, property, transaction or event" and "[i]t appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges." Civil L.R. 3-12(a). The four putative class actions easily satisfy the Court's requirements for related cases.

Google is the sole named defendant in all four putative class actions, and therefore, the cases concern the same defendant. Further, the cases concern substantially the same putative plaintiffs because each case asserts a putative class of Google AdWords customers.

Also, all four putative class actions arise from and relate to the named plaintiffs' and putative class members' contractual relationship with Google for Google's AdWords advertising program. Although the *Almeida* case challenges alleged charges for clicks occurring on the content network when the "CPC input" is left blank, while the *Levitte*, *RK West*, and *Pulaski* cases challenge alleged charges for clicks for advertisements placed on parked domain or error page websites, each of the cases arise from and involve the same subject matter—Google's AdWords advertising program. All the actions involve and require an understanding of Google's advertising program, Google's contractual relationship with the named plaintiffs and putative class members, AdWords, the AdWords bidding process, the way advertisements are displayed and where they are displayed, and the fees that Google charges and how those fees are charged.

Additionally, all the actions assert claims for alleged unjust enrichment and alleged violation of California Business and Professions code section 17200 arising from the Google AdWords advertising program.

Last, given that the cases concern substantially the same subject matter and involve overlapping putative classes, there is the potential for unduly burdensome duplication of party and judicial labor and expense. Moreover, there is the potential for conflicting results, at a minimum as to class certification, if the cases are not related and if they proceed as presently assigned before three different judges.

Stipulation on Google's Administrative Motion

As required under Civil Local Rule 3-12(b), Google stands ready to file an administrative motion under Civil Local Rules 3-12 and 7-11 to relate the cases. If the cases are related, all four cases will be reassigned to the same judge, which is the judge in the low-numbered case. Here, the low-numbered case is the *Almeida* case, and the judge assigned to that case is Ronald M. Whyte. Also, the *RK West* case is already assigned to him. The *Levitte* and *Pulaski & Middleman* cases would be reassigned to him if the cases are related.



Plaintiffs' Counsel in Google AdWords Actions
August 25, 2008
Page Three

Under Civil Local Rule 7-11(a), the administrative motion "must be accompanied by a proposed order and by either a stipulation under Civil L.R. 7-12 or by a declaration that explains why a stipulation could not be obtained." Civil L.R. 7-11(a). We ask that you stipulate that the cases are related, which will result in all the cases being assigned to Judge Whyte. The administrative motion does not address the level of coordination or consolidation. That will be addressed later after the cases are reassigned to the same judge.

Request for Extension of Time to Respond

The *Levitte*, *RK West*, and *Pulaski & Middleman* cases have all recently been served and presently have deadlines to answer or otherwise respond to the complaints staggered throughout the first half of September. We would appreciate the professional courtesy of coordinating the deadline to respond in those three actions, and request an extension of time to respond in those three actions to on or before September 30, 2008. By then, Google's administrative motion to relate the cases will be decided (and the cases reassigned if granted). Under Civil Local Rule 6-1, we can simply stipulate to the extension without Court approval, but we will have to file the stipulation in the three respective actions.

Please contact me by end of day **Wednesday, August 27, 2008** to advise whether your respective plaintiffs will stipulate that the cases are related and whether they will agree to coordinate and extend Google's response deadline to on or before September 30, 2008.

Sincerely,

A handwritten signature in black ink, appearing to read "L. P. Norton". The signature is written over a horizontal line.

Leo P. Norton

Enclosures – as stated

cc: Daralyn J. Durie
Keker & Van Nest, LLP (w/ enclosures)

600883 v1/SD

EXHIBIT 3

Norton, Leo

From: Robert C. Schubert [rschubert@schubertlawfirm.com]
Sent: Tuesday, August 26, 2008 1:00 PM
To: Norton, Leo; Kimberly A. Kralowec; guido@saveri.com; rick@saveri.com; cadio@saveri.com; terry@gba-law.com; adam@gba-law.com; monique@gba-law.com; eriksyverson@gmail.com; bsk@kbklawyers.com; rlk@kbklawyers.com; at@kbklawyers.com; Willem F. Jonckheer
Cc: Rhodes, Michael; Willsey, Peter; ddurie@kvn.com
Subject: RE: Google AdWords N.D. Cal. Cases - Letter from Cooley to Plaintiffs' Counsel

The attorneys in the CA cases will be discussing the issues you raise and expect to get back to you by Thursday at the latest.

From: Norton, Leo [mailto:lnorton@cooley.com]
Sent: Tuesday, August 26, 2008 12:19 PM
To: Kimberly A. Kralowec; guido@saveri.com; rick@saveri.com; cadio@saveri.com; terry@gba-law.com; adam@gba-law.com; monique@gba-law.com; eriksyverson@gmail.com; bsk@kbklawyers.com; rlk@kbklawyers.com; at@kbklawyers.com; Robert C. Schubert; Willem F. Jonckheer
Cc: Rhodes, Michael; Willsey, Peter; ddurie@kvn.com
Subject: RE: Google AdWords N.D. Cal. Cases - Letter from Cooley to Plaintiffs' Counsel

Ms. Kralowec:

Thank you for your prompt response. We are fine with September 3 for plaintiffs' response to our letter regarding relating the cases.

As for coordinating Google's response deadline and requested extension of time, we request that all plaintiffs' agree to coordinate and extend Google's response to September 30. Although we appreciate you agreeing to a further extension of time in your case (the *Levitte* case) until September 10, such an extension does not result in a coordinated response deadline. The deadline to respond in the *Pulaski* case is September 4. Additionally, Google was recently served with another AdWords parked domain and error page websites putative class action. That case is pending in the N.D. Ill., and has a mid-September response date. We are attempting to get plaintiff in that action to voluntarily dismiss and re-file in the N.D. Cal. in light of the California forum selection and choice of law clauses in the advertising program agreement and terms of service agreement and the four earlier filed overlapping and competing putative class actions in the N.D. Cal. If plaintiff there does not agree to do so, we intend to file a motion to dismiss or transfer or an MDL motion to get all the cases in the N.D. Cal. Considering the upcoming holiday, the number of actions that have recently been served to which responses are due staggered throughout September, the unresolved procedural issues regarding relating all the cases in N.D. Cal. before the same judge, including the N.D. Ill. action, our recent involvement, and the lack of impending deadlines in the cases other than *Almeida*, we believe coordinating the remaining responses in all cases to September 30 is reasonable.

I will call you shortly to discuss further.

Sincerely,

Leo P. Norton

Cooley Godward Kronish LLP • 4401 Eastgate Mall

San Diego, CA 92121-1909

Direct: 858/550-6083 • Fax: 858/550-6420

Bio: www.cooley.com/lnorton • Practice: www.cooley.com/litigation

9/4/2008

From: Kimberly A. Kralowec [mailto:KKralowec@schubertlawfirm.com]
Sent: Tuesday, August 26, 2008 9:25 AM
To: Norton, Leo; guido@saveri.com; rick@saveri.com; cadio@saveri.com; terry@gba-law.com; adam@gba-law.com; monique@gba-law.com; eriksyverson@gmail.com; bsk@kbklawyers.com; rlk@kbklawyers.com; at@kbklawyers.com; Robert C. Schubert; Willem F. Jonckheer
Cc: Rhodes, Michael; Willsey, Peter; ddurie@kvn.com
Subject: RE: Google AdWords N.D. Cal. Cases - Letter from Cooley to Plaintiffs' Counsel

Dear Mr. Norton:

I write on behalf of plaintiffs' counsel in the four cases mentioned in your letter. We have received your letter and are in the process of analyzing it. We will require an additional week, through September 3, 2008, to respond to your points. To facilitate this, we are willing to agree to an additional week for Google to respond to the complaint in the *Levitte* case. The new deadline would be September 10, 2008. I am informed that the response deadlines in the other two cases are already later than that. Please contact me with any questions or concerns regarding the above.

Sincerely,

Kimberly A. Kralowec, Esq.
Schubert Jonckheer Kolbe & Kralowec LLP
Three Embarcadero Center, Suite 1650
San Francisco, CA 94111
Telephone: (415) 788-4220
Facsimile: (415) 788-0161
Email: kkralowec@schubertlawfirm.com
Web: <http://www.schubertlawfirm.com>

From: Norton, Leo [mailto:lnorton@cooley.com]
Sent: Monday, August 25, 2008 11:25 AM
To: guido@saveri.com; rick@saveri.com; cadio@saveri.com; terry@gba-law.com; adam@gba-law.com; monique@gba-law.com; eriksyverson@gmail.com; bsk@kbklawyers.com; rlk@kbklawyers.com; ar@kbklawyers.com; rschubert@chubertlawfirm.com; Willem F. Jonckheer; Kimberly A. Kralowec
Cc: Rhodes, Michael; Willsey, Peter; ddurie@kvn.com
Subject: Google AdWords N.D. Cal. Cases - Letter from Cooley to Plaintiffs' Counsel

Dear Counsel:

I am attaching a letter and enclosures also being sent to you today via mail regarding certain administrative matters relating to the Google AdWords cases pending in the Northern District of California. We request your response on two issues. Please respond by end of day on Wednesday, August 27, 2008.

<<GOOGLE Letter to Counsel.pdf>> <<Almeida v. Google.pdf>> <<Levitte v. Google.pdf>> <<RK West, Inc. v. Google.pdf>> <<Pulaski & Middleman v. Google.pdf>>

Please contact me if you have any questions. Thank you.

Sincerely,

9/4/2008

Leo P. Norton

Cooley Godward Kronish LLP • 4401 Eastgate Mall

San Diego, CA 92121-1909

Direct: 858/550-6083 • Fax: 858/550-6420

Bio: www.cooley.com/l/norton • Practice: www.cooley.com/litigation

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EXHIBIT 4

Norton, Leo

From: Norton, Leo
Sent: Tuesday, September 02, 2008 8:11 AM
To: 'rschubert@schubertlawfirm.com'; 'KKralowec@schubertlawfirm.com'; 'guido@saveri.com'; 'rick@saveri.com'; 'cadio@saveri.com'; 'terry@gba-law.com'; 'adam@gba-law.com'; 'monique@gba-law.com'; 'eriksyverson@gmail.com'; 'bsk@kbklawyers.com'; 'rlk@kbklawyers.com'; 'at@kbklawyers.com'; 'wjonckheer@schubertlawfirm.com'
Cc: Rhodes, Michael; Willsey, Peter; 'ddurie@kvn.com'
Subject: Re: Google AdWords N.D. Cal. Cases - Letter from Cooley to Plaintiffs' Counsel

We did not receive a response on Thursday as stated in the email below, and it has been over a week since we sent our letter. If we do not receive a response by noon today, we will file the administrative motion to relate the N.D. Cal. cases today, and advise the court (as we are required to do under the local rules) that we attempted to reach a stipulation with plaintiffs regarding relating the cases, but plaintiffs failed to respond.

Please also advise whether plaintiffs agree to coordinating and extending Google's deadline to respond to September 30.

Sincerely,

-----Original Message-----

From: Robert C. Schubert
To: Leo Norton
To: Kimberly A. Kralowec
To: guido@saveri.com
To: rick@saveri.com
To: cadio@saveri.com
To: terry@gba-law.com
To: adam@gba-law.com
To: monique@gba-law.com
To: eriksyverson@gmail.com
To: bsk@kbklawyers.com
To: rlk@kbklawyers.com
To: at@kbklawyers.com
To: Willem F. Jonckheer
Cc: Michael Rhodes
Cc: Willsey, Peter
Cc: ddurie@kvn.com
Sent: Aug 26, 2008 1:00 PM
Subject: RE: Google AdWords N.D. Cal. Cases - Letter from Cooley to Plaintiffs' Counsel

The attorneys in the CA cases will be discussing the issues you raise and expect to get back to you by Thursday at the latest.

From: Norton, Leo [mailto:lnorton@cooley.com]
Sent: Tuesday, August 26, 2008 12:19 PM
To: Kimberly A. Kralowec; guido@saveri.com; rick@saveri.com; cadio@saveri.com; terry@gba-law.com; adam@gba-law.com; monique@gba-law.com; eriksyverson@gmail.com; bsk@kbklawyers.com; rlk@kbklawyers.com; at@kbklawyers.com; Robert C. Schubert; Willem F. Jonckheer
Cc: Rhodes, Michael; Willsey, Peter; ddurie@kvn.com
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Ms. Kralowec:

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-----Original Message Truncated-----

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Bio: www.cooley.com/l Norton Practice: www.cooley.com/litigation